

LEGISLATIVE BILL 95

Approved by the Governor May 29, 2003

Introduced by Maxwell, 9; Combs, 32; Redfield, 12; Erdman, 47; Friend, 10

AN ACT relating to public health and welfare; to amend sections 28-1301 and 71-1340, Reissue Revised Statutes of Nebraska, and sections 71-605, 71-606, 71-1301, and 71-1339, Revised Statutes Supplement, 2002; to adopt the Cremation of Human Remains Act; to provide penalties; to change penalty provisions relating to human skeletal remains and burial goods; to change provisions relating to the disposition of human remains; to define and redefine terms; to provide duties for hospitals; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 31 of this act shall be known and may be cited as the Cremation of Human Remains Act.

Sec. 2. For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

(1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;

(2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 71-1339;

(3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;

(4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;

(5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;

(6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;

(7) Cremation chamber means the enclosed space within which a cremation takes place;

(8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;

(9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(10) Crematory operator means a person who is responsible for the operation of a crematory;

(11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;

(12) Department means the Department of Health and Human Services Regulation and Licensure;

(13) Director means the Director of Regulation and Licensure;

(14) Funeral director has the same meaning as in section 71-507;

(15) Funeral establishment has the same meaning as in section 71-1301;

(16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;

(17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains; and

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

Sec. 3. A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the department under the Cremation of Human Remains Act. The department shall issue a license to a crematory authority that satisfies the requirements for

licensure under the act. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under the act. Crematory authorities operating crematories on the effective date of this act which apply for licensure within sixty days after the effective date of this act shall be presumed to meet requirements for initial or provisional licensure under the act.

Sec. 4. (1) A crematory shall conform to all building codes and environmental regulations.

(2) A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

Sec. 5. An applicant for an initial or renewal license as a crematory authority shall file a written application with the department. The application shall be accompanied by the license fee required under section 9 of this act and a certificate confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Cremation of Human Remains Act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

Sec. 6. Except as otherwise provided in the Cremation of Human Remains Act, licenses issued pursuant to the act shall expire five years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

Sec. 7. (1) A crematory authority desiring to relocate a crematory shall file a written application with the department at least thirty days prior to the designated date of such relocation. The application shall be accompanied by a fee of not less than fifteen dollars and not more than one hundred fifty dollars, as determined by the department in rules and regulations.

(2) A crematory authority desiring to change ownership of a crematory shall file a written application with the department at least thirty days prior to the designated date of such change. The application shall be accompanied by a fee of not less than fifteen dollars and not more than one hundred fifty dollars, as determined by the department in rules and regulations.

(3) A crematory authority desiring to change its name shall file a written application with the department at least thirty days prior to such change. The application shall be accompanied by a fee of ten dollars.

Sec. 8. A provisional license may be issued to a crematory authority that substantially complies with requirements for licensure under the Cremation of Human Remains Act and rules and regulations adopted and promulgated under the act. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the crematory authority fully complies with the requirements for licensure under the act and rules and regulations.

Sec. 9. (1) The fee for an initial or renewal license as a crematory authority shall include a fee of three hundred dollars.

(2) If the license application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall collect the same fee as provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall collect a fee of twenty-five dollars for a certified statement that a crematory authority is licensed in this state and a fee of five dollars for verification that a crematory authority is licensed in this state.

(5) The department shall adopt and promulgate rules and regulations for the establishment of fees under the Cremation of Human Remains Act.

(6) The department shall collect fees authorized under the act and shall remit such fees to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund. Such fees shall only be used for activities related to the licensure of crematory authorities.

Sec. 10. (1) The department may inspect or provide for the inspection of any crematory operated by a crematory authority licensed under the Cremation of Human Remains Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department.

(2) The department shall issue an inspection report and provide a copy of the report to the crematory authority within ten working days after the completion of an inspection. The department shall review any findings of noncompliance contained in such report within twenty working days after such inspection.

(3) If the department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act, the department may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within ten working days, and a notice that the department may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the department may take further action as provided in sections 12 to 15 of this act.

Sec. 11. (1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation relating to such complaints.

(2) A complaint submitted to the department under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the department relating to such complaint.

Sec. 12. (1) If the director determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, he or she may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the department. A hearing shall be held by the department no later than ten days after the date of such order. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

(2) A continuance of the hearing under subsection (1) of this section shall be granted by the department upon written request from the crematory authority. Such continuance shall not exceed thirty days.

(3) A temporary suspension or temporary limitation order by the director under this section shall take effect when served upon the crematory authority and shall not exceed ninety days. If further action is not taken by the department within such period, the temporary suspension or temporary limitation shall expire.

Sec. 13. The department may deny or refuse to renew a license under the Cremation of Human Remains Act or take disciplinary action against a crematory authority licensed under the act as provided in section 14 of this act on any of the following grounds:

(1) Violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act;

(2) Conviction of any crime involving moral turpitude;

(3) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

(4) Conviction of a violation pursuant to section 17 of this act;

(5) Obtaining a license as a crematory authority by false representation or fraud;

(6) Misrepresentation or fraud in the operation of a crematory; or

(7) Failure to allow access by an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure to a crematory operated by the crematory authority

for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such department.

Sec. 14. (1) The department may impose any one or more of the following types of disciplinary action against a crematory authority licensed under the Cremation of Human Remains Act:

(a) A fine not to exceed five hundred dollars per violation;

(b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;

(c) Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed two years during which the crematory may not operate; and

(e) Revocation and permanent termination of the license.

(2) Any fine imposed and unpaid under the Cremation of Human Remains Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The department shall, within thirty days after receipt, remit any such fines to the State Treasurer for credit to the permanent school fund.

Sec. 15. Any party to a decision of the department under the Cremation of Human Remains Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 16. (1) If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the department and payment of the applicable fee as provided in section 9 of this act.

(2) If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(3) If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in section 9 of this act.

(4) If the license of a crematory authority has been suspended, such license may be reinstated by the department prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the department may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the director shall (a) grant full reinstatement of the license, (b) modify the suspension, or (c) deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases.

(5) If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until five years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such five-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Sec. 17. (1) Maintaining or operating a crematory in violation of the Cremation of Human Remains Act or any rules and regulations of the department adopted and promulgated under the act is a public nuisance and may be abated as a nuisance as provided by law.

(2) It is a Class III misdemeanor to (a) establish, operate, or maintain a crematory subject to the Cremation of Human Remains Act without being licensed as a crematory authority under the act, (b) hold oneself out to the public as a crematory authority without being licensed under the act, or (c) perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the department or a cremation permit.

(3) Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a Class III misdemeanor.

(4) A violation of any other provision of the Cremation of Human Remains Act is a Class III misdemeanor.

Sec. 18. The department may maintain an action in the name of the State of Nebraska for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under the Cremation of Human Remains Act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under the act, without alleging any further or more particular facts concerning the same.

Sec. 19. The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 71-1339.

Sec. 20. (1) A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative.

(2) If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to (a) comply with all applicable public health laws, (b) provide for the health and safety of persons employed at such facility, and (c) prevent any unauthorized access to such facility.

(3) A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

(4) If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than twenty-four hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

Sec. 21. (1) No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

(2) The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

Sec. 22. (1) A crematory authority shall not accept human remains for cremation without a proper label indicating the name of the deceased and the name and location of the funeral establishment placed on the exterior of the alternative container or casket.

(2) No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

(3) No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse (a) a noncombustible casket or any other container that is not an alternative container or (b) a casket or container that is not labeled as required under subsection (1) of this section.

(4) An alternative container shall:

(a) Be composed of readily combustible materials suitable for cremation;

(b) Be able to be closed to provide for complete encasement of the human remains;

(c) Be resistant to leakage or spillage;

(d) Be rigid enough for easy handling; and

(e) Provide protection for the health and safety of persons handling such container.

Sec. 23. (1) A crematory authority shall not cremate human remains until it has received:

(a) A cremation authorization form as provided in subsection (2) of this section;

(b) A completed and executed permit for transit or cremation as provided by the department or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated; and

(c) A delivery receipt form.

(2) A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

(a) The name of the deceased;

(b) Date and place of death;

(c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;

(d) Notification that the death did or did not occur from a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health;

(e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;

(f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;

(g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;

(h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;

(i) The name of the person authorized to claim the cremated remains from the crematory authority; and

(j) The intended disposition of the cremated remains.

(3) A crematory authority shall retain, for at least seven years after the cremation, in printed or electronic format, copies of the cremation authorization form, permit for transit or cremation as provided by the department or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under the Cremation of Human Remains Act.

Sec. 24. (1) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

(2) A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

Sec. 25. (1) No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room or at a medical facility by appropriate medical personnel.

(2) No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of

the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

Sec. 26. (1) If a crematory authority or funeral establishment (a) is aware of any dispute concerning the cremation of human remains or (b) has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

(2) If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

Sec. 27. (1) In so far as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This subsection shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this subsection.

(2) The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

(3) If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

(4) If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

Sec. 28. (1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after the effective date of this act.

(2) Cremated remains shall be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 27 of this act may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or

shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

Sec. 29. The department may adopt and promulgate rules and regulations to implement the Cremation of Human Remains Act, to include, but not be limited to, rules and regulations establishing conditions under which human remains of persons whose death was caused by a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation, and minimum sanitation standards for all crematories.

Sec. 30. A crematory authority may enact reasonable bylaws not inconsistent with the Cremation of Human Remains Act for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

Sec. 31. The Cremation of Human Remains Act shall be construed and interpreted as a comprehensive cremation law, and the provisions of the act shall take precedence over any existing laws or rules and regulations that govern human remains that do not specifically address cremation.

Sec. 32. Section 28-1301, Reissue Revised Statutes of Nebraska, is amended to read:

28-1301. (1) The definitions found in section 12-1204 shall apply to this section.

(2) Except as provided in subsection (3) of this section, a person commits the offense of removing, abandoning, or concealing human skeletal remains or burial goods if he or she:

(a) Knowingly digs up, disinters, removes, or carries away from its place of deposit or burial any such remains or goods, attempts to do the same, or aids, incites, assists, encourages, or procures the same to be done;

(b) Knowingly throws away or abandons any such remains or goods in any place other than a regular place for burial and under a proper death certificate issued under section 71-182 or 71-605; or

(c) Receives, conceals, purchases, sells, transports, trades, or disposes of any such remains or goods if the person knows or has reason to know that such remains or goods have been dug up, disinterred, or removed from their place of deposit or burial or have not been reported in a proper death certificate issued under section 71-182 or 71-605, attempts to do the same, or aids, incites, assists, encourages, or procures the same to be done.

(3) This section shall not apply to: (a) A body authorized to be surrendered for purposes of dissection as provided by law; (b) the body of any person directed to be delivered by competent authority for purposes of dissection; (c) the officers of any lawfully constituted cemetery acting under the direction of the board of trustees in removing any human skeletal remains or burial goods from one place of burial in the cemetery to another place in the same cemetery when disinterment and reinterment permits are secured and return made pursuant to section 71-605; (d) any person removing the human skeletal remains or burial goods of a relative or intimate friend from one place of burial in any lawfully constituted cemetery to another when consent for such removal has been obtained from the lawfully constituted authority thereof and permits for disinterment and reinterment secured and return made pursuant to section 71-605; (e) any professional archaeologist engaged in an otherwise lawful and scholarly excavation of a nonburial site who unintentionally encounters human skeletal remains or associated burial goods if the archaeologist complies with the notification requirements of the Unmarked Human Burial Sites and Skeletal Remains Protection Act; or (f) any archaeological excavation by the Nebraska State Historical Society or its designee in the course of execution of the duties of the society if any human skeletal remains or associated burial goods discovered during such excavation are disposed of pursuant to section 12-1208.

(4) Violation of this section shall be a Class ~~I~~ IV felony.

Sec. 33. Section 71-605, Revised Statutes Supplement, 2002, is amended to read:

71-605. (1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the Department of Health and Human Services Finance and Support. Such standard form shall include a space for certificate of veteran status and the period of service in the armed forces of the United States as defined in section 80-401.01 and a statement of the cause of death made by a person holding a valid license as a physician who last attended the deceased. The standard form shall also include the deceased's social security number. Death and fetal death certificates shall be completed by the funeral

directors and embalmers and physicians for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician shall have the responsibility and duty to complete and sign in his or her own handwriting, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician was in attendance, the funeral director and embalmer shall refer the case to the county attorney for a death certificate.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the Department of Health and Human Services Finance and Support within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on a form prescribed and furnished by the Department of Health and Human Services Finance and Support.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the Department of Health and Human Services Finance and Support to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the next of kin of the deceased, as listed in section 71-1339, or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the Department of Health and Human Services Finance and Support prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation

company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the ~~dead human body of a stillborn infant with due respect for the stillborn infant and in accordance with existing law when requested by the parents or legal guardian~~ remains of a child born dead pursuant to section 38 of this act.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the Department of Health and Human Services Finance and Support within five business days after the interment takes place.

Sec. 34. Section 71-606, Revised Statutes Supplement, 2002, is amended to read:

71-606. A child born dead shall be registered as a fetal death on a certificate form furnished by the Department of Health and Human Services Finance and Support. Such certificate shall not be required for a child which has not advanced to the twentieth week of gestation. The certificate shall be filed with the department by the funeral director and embalmer in charge of the funeral and shall include a statement of the cause of death made by a person holding a valid license as a physician who was in attendance. In the event of hospital disposition, as provided in section ~~71-605~~ 38 of this act, the entire certificate shall be completed by the attending physician and subscribed to also by the hospital administrator or his or her designated representative. If the attendant is not a physician, the death shall be referred to the county attorney for certification. The same time limit for completion shall apply as for a regular death certificate.

Sec. 35. Section 71-1301, Revised Statutes Supplement, 2002, is amended to read:

71-1301. For purposes of sections 71-1301 to 71-1306 and 71-1326 to 71-1354, unless the context otherwise requires:

(1) Accredited school of mortuary science ~~shall mean~~ means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the department upon recommendation of the board;

(2) Apprentice ~~shall mean~~ means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer ~~shall be~~ is responsible for all funeral assists and embalmings completed by the apprentice;

(3) Board ~~shall mean~~ means the Board of Funeral Directing and Embalming;

(4) Branch establishment ~~shall mean~~ means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted;

(5) Casket ~~shall mean~~ means a receptacle for a dead human body and ~~shall~~ does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets;

(6) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(7) Department ~~shall mean~~ means the Department of Health and Human Services Regulation and Licensure;

~~(7)~~ (8) Embalming ~~shall mean~~ means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming. Any person who publicly professes to be a funeral director and embalmer or an apprentice ~~shall be~~ is deemed to be practicing embalming. The performance of the following acts ~~shall~~ is also ~~be~~ deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities;

~~(8)~~ (9) Funeral directing ~~shall mean~~ means (a) counseling families

or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, ~~+~~ ~~Cremation shall be considered as a final disposition of a dead human body the same as interment,~~ (b) providing for or maintaining a funeral establishment, or (c) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing;

~~(9)~~ (10) Funeral establishment shall mean means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies;

~~(10)~~ (11) Licensee shall mean means a person licensed by the department as a funeral director and embalmer on or after January 1, 1994, or a person licensed as a funeral director or embalmer prior to January 1, 1994;

~~(11)~~ (12) Licensure examination shall mean means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination; and

~~(12)~~ (13) Supervision shall mean means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Sec. 36. Section 71-1339, Revised Statutes Supplement, 2002, is amended to read:

71-1339. The Except as otherwise provided in section 38 of this act, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

(1) Any person authorized to direct the disposition of the decedent's body pursuant to a notarized affidavit authorizing such disposition and signed and sworn to by the decedent. Such an affidavit shall be sufficient legal authority for authorizing disposition without additional authorization from the decedent, the decedent's family, or the decedent's estate. Such person shall not be considered an attorney in fact pursuant to sections 30-3401 to 30-3432;

(2) The surviving spouse of the decedent;

(3) If the surviving spouse is incompetent or not available or if there is no surviving spouse, the decedent's surviving adult children. If there is more than one adult child, any adult child, after confirmation in writing of the notification of all other adult children, may direct the manner of disposition unless the funeral establishment or crematory authority receives written objection to the manner of disposition from another adult child;

(4) The decedent's surviving parents;

(5) The persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may direct the manner of disposition;

(6) A guardian of the person of the decedent at the time of such person's death;

(7) The personal representative of the decedent;

(8) The State Anatomical Board or county board in the case of an indigent person or any other person the disposition of whose remains is the responsibility of the state or county; or

(9) A representative of an entity described in section 71-1340 that has arranged with the funeral establishment or crematory authority to cremate a body part in the case of body parts received from such entity described in section 71-1340.

A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator reasonably believes such person is entitled to control the final disposition of the remains of the deceased person. ~~(1) The surviving spouse, (2) if the surviving spouse is incompetent or not available, or if there be no surviving spouse, adult child of the decedent, (3) a surviving parent of the decedent, (4) an adult brother or sister of the decedent, (5) an adult person in the next degrees of kindred in the order named by the laws of Nebraska as entitled to succeed to the estate of the decedent, (6) the State Anatomical Board, or (7) the county board of the~~

~~county in which death occurred.~~

The liability for the reasonable cost of ~~interment~~ the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision ~~(7)~~ (8) of this section, upon the county in which death occurred from funds available for such purpose.

Sec. 37. Section 71-1340, Reissue Revised Statutes of Nebraska, is amended to read:

71-1340. A decedent, prior to his or her death, may direct the preparation for ~~type or place of interment~~ the final disposition of his or her remains, either by oral or written instructions. If such instructions are in a will or other written instrument, ~~he or she~~ the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the Director of Regulation and Licensure, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the Director of Regulation and Licensure under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the Director of Regulation and Licensure shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as ~~above~~ set forth in this section.

Sec. 38. (1) Every hospital licensed under the Health Care Facility Licensure Act shall maintain a written policy for the disposition of the remains of a child born dead at such hospital. A parent of such child shall have the right to direct the disposition of such remains, except that disposition may be made by the hospital if no such direction is given by a parent within fourteen days following the delivery of such remains. Such policy and such disposition shall comply with all applicable provisions of state and federal law. Upon the delivery of a child born dead, the hospital shall notify at least one parent of such parents' right to direct the disposition of the remains of such child and shall provide at least one parent with a copy of its policy with respect to such disposition.

(2) For purposes of this section, child born dead means a child at any stage of gestation (a) who has died in utero, (b) whose remains have been removed from the uterus of the mother, for whom pregnancy has been confirmed prior to such removal, and (c) whose remains are identified with the naked eye at the time of such removal by the attending physician or upon subsequent pathological examination if requested by a parent. This section shall not apply to the performance of an elective abortion.

(3) Except as otherwise provided by law, nothing in this section shall be interpreted to prohibit any hospital from providing additional notification and assistance to the parent of a child born dead at such hospital relating to the disposition of the remains of such child, even if such remains cannot be identified with the naked eye at the time of delivery or upon subsequent pathological examination.

Sec. 39. The Revisor of Statutes shall assign section 38 of this act to Chapter 71, article 20.

Sec. 40. Original sections 28-1301 and 71-1340, Reissue Revised Statutes of Nebraska, and sections 71-605, 71-606, 71-1301, and 71-1339, Revised Statutes Supplement, 2002, are repealed.